

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

DOMENIC S. TERRANOVA,
Plaintiff

v.

MATTHEW A. CHIARA &
ANGELA M. CHIARA, Individually and
As Trustee of the ART Trust,
Defendants.

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Case No. 3:04 CV 1852 (CFD)

RULING ON PLAINTIFF'S SECOND MOTION TO REMAND

Plaintiff Domenic S. Terranova brought this action in May 2001 in the state Trial Court of Massachusetts, Haverhill Division, alleging breach of contract by defendants for nonpayment of legal fees. Terranova seeks to recover approximately \$6,000 for legal services and uncompensated disbursements made on behalf of defendants.

At the time this action was filed in state court, all parties were residents of Massachusetts. In June 2003, defendants filed a notice of removal to the United States District Court for the District of Massachusetts, where the action was docketed as case number 1:03-cv-11197 (REK). In an order dated December 3, 2003, Senior U.S. District Judge Robert E. Keeton remanded the case for lack of subject matter jurisdiction, noting that the parties neither possessed diversity of citizenship nor made any claims arising under federal law.

On November 3, 2004, defendants filed a notice of removal to the District of Connecticut, alleging that federal subject matter jurisdiction existed on the basis of diversity of citizenship,

because defendants were now residents of Connecticut and they had raised a counterclaim against plaintiff for negligent representation which sought approximately \$100,000 in damages. See Doc. #1. The plaintiff now has filed a second motion to remand, alleging that this Court still lacks subject matter jurisdiction.¹

I. Discussion

Plaintiff argues that, in order for the court to exercise subject matter jurisdiction based upon diversity of citizenship, the parties must be diverse from one another at the time the action is commenced. Defendants admit that they did not possess diversity of citizenship when the complaint was filed, but at some later point “changed their address to Connecticut to be near their children because of ill health.” See Defendants’ Motion to File Unilateral Scheduling Statement [Doc. #4] at Exh. 3.

It is a longstanding tenet of federal law that “the jurisdiction of the Court depends upon the state of things at the time of the action brought.” Mullen v. Torrance, 22 U.S. (9 Wheat.) 537, 539 (1824). The Supreme Court more recently reiterated that “it measures all challenges to subject-matter jurisdiction premised upon diversity of citizenship against the state of facts that existed at the time of filing,” and that it adheres to the time-of-filing rule “regardless of the costs it imposes.” Grupo Dataflux v. Atlas Global Grp., 124 S. Ct. 1920, 1924 (U.S. May 17, 2004) (emphasis added). Nor can a party’s subsequent change in citizenship “cure the jurisdictional

¹ The filing deadline to respond to this motion has passed. Defendants have moved to extend the deadline to file their opposition papers to the motion to remand until February 28, 2005. See Doc. #12. Because the Court finds the legal issues pertaining to the motion unequivocally in plaintiff’s favor, extending defendants’ deadline for response would serve no purpose.

defect that existed at the time of filing.” Id. at 1926.

In light of this explicit rule, and because defendants have admitted their lack of diversity at time of filing, the Court concludes that it lacks subject matter jurisdiction over this case.² Under 28 U.S.C. § 1447(c), “if at any time before final judgment [in a case removed from state to federal court,] it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.” See also Caterpillar, Inc. v. Lewis, 519 U.S. 61, 69 (1996) (citing same).

The Court notes that, even if subject matter jurisdiction were to exist in this action, the case was improperly removed under 28 U.S.C. § 1441(a). That section provides that an otherwise removable civil action brought in a state court may be removed “to the district court of the United States for the district and division embracing the place where such action is pending” (emphasis added). Because this action originally was filed in a Massachusetts state court, it may only be removed to the United States District Court for the District of Massachusetts.³ Lack of subject matter jurisdiction and procedural defect in removal both are grounds for remand. See 28 U.S.C. § 1441(a); 28 U.S.C. § 1447(c). The instant case merits remand on either ground.

II. Conclusion

Plaintiff’s Second Motion to Remand Case to State Court [Doc. #6] is GRANTED. This action is remanded to the Haverhill Division of the Trial Court of Massachusetts. The Clerk is

² Neither party has alleged that federal question jurisdiction exists in this case, nor can the Court identify any federal claims raised by either side. The lack of diversity jurisdiction in this case therefore is dispositive.

³ This, of course, is where defendants first removed this action, where (as discussed previously) the district judge also remanded it for lack of federal subject matter jurisdiction.

directed to close this case.

So ordered this ____11th____ day of February 2005 at Hartford, Connecticut.

_____/s/ CFD_____
CHRISTOPHER F. DRONEY
UNITED STATES DISTRICT JUDGE